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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 277

THE AUTOMATIC DEVICES CORPORATION,
Petitioner,

vs.

SINKO TOOL & MANUFACTURING COMPANY,
Respondent.

MOTION TO WITHHOLD NOTICE OF DENIAL OF PETITION FOR CERTIORARI, WITH ACCOMPANYING AFFIDAVIT.

DRURY W. COOPER,
233 Broadway,
New York, N. Y.,
THOMAS J. BYRNE,
233 Broadway,
New York, N. Y.,
HENRY M. HUXLEY,
38 South Dearborn Street,
Chicago, Illinois,
Counsel for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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And now comes The Automatic Devices Corporation, petitioner in the above entitled case, and

MOVES, That the official notification to the Court of Appeals for the Seventh Circuit that the petition for certiorari in the above-entitled case was denied on October 14, 1940, be withheld for a period of twenty-five days from and after October 14, 1940, and such extension thereof as may be granted by the Court for filing a petition for rehearing.

The reason for the above motion is that a case involving the issue of validity and infringement of the Mead Patent No. 1,736,544 and the Cohen Patent No. 2,140,311 involved in the present suit and held invalid and not infringed by the Court of Appeals for the Seventh Circuit

will shortly be presented to the Court of Appeals for the Second Circuit, in the case of *The Automatic Devices Corporation* v. *The Cuno Engineering Corporation,* and in the event that the Court of Appeals for the Second Circuit should reach a different decision from that of the Court of Appeals for the Seventh Circuit, petitioner herein desires an opportunity to file a petition for rehearing based on such a diversity of decision. By withholding the notice to the Court of Appeals for the Seventh Circuit, the mandate of that Court would continue to be withheld.

The facts on which this motion are based are set forth in the accompany affidavit.

DRURY W. COOPER,
THOMAS J. BYRNE,
HENRY M. HUXLEY,
Counsel for Petitioner.

Receipt of copy of the above motion and accompanying affidavit is acknowledged, this 15th day of October, 1940.

(Sgd.) George A. Chritton
Of Counsel for Respondent.

AFFIDAVIT.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

HENRY M. HUXLEY, being duly sworn, deposes and says:

I am a resident of Chicago, Illinois, a member of the Supreme Court of the United States, and of counsel for the petitioner in the above-entitled case.

The petitioner duly filed its petition for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit asking for a review of that portion of the decision of said Court of Appeals for the Seventh Circuit holding Claims 2, 3 and 11 of the Mead Patent No. 1,736,544 invalid and not infringed, and Claims 3 and 14 to 26 inclusive of the Cohen Patent No. 2,140,311 invalid, and Claim 3 thereof not infringed, as set forth in the opinion of the Court reported 112 Fed. (2d) 335. The mandate of said Court has been withheld pending decision of the case by the Supreme Court.

By telegram received from the Clerk of the Supreme Court, I was advised that the petition for writ of certiorari was denied on October 14, 1940.

In the case of *The Automatic Devices Corporation* v. *The Cuno Engineering Corporation*, Claims 1, 2, 3 and 11 of the same Mead Patent No. 1,736,544, and Claims 3 and 20 of the same Cohen Patent No. 2,140,311 were involved; and by decision of the District Court for the District of Connecticut the said Mead claims were held not infringed by a construction substantially similar to that involved in the present case, and Claims 3 and 20 of the Cohen Patent No. 2,140,311 were held invalid, as reported 34 F. Supp. 146.

An appeal to the Court of Appeals for the Second Circuit

has been taken in the Cuno case, and it is expected that the record and appellant's brief will be presented to said Court of Appeals by November 1, 1940, and that said case will be duly presented for decision by said Court as soon as practicable thereafter.

Further affiant saith not.

(Signed) HENRY M. HUXLEY.

Subscribed and sworn to before me, this 15th day of October, 1940.

(Signed) MARY R. BOND,
Notary Public.

(SEAL)